IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**SECOND APPEAL NO. 185 OF 1991**
**WITH**
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**WITH**
**SECOND APPEAL NO. 187 OF 1991**

Shri Gojaba Appa Dhone
age 40, Occupation-agriculture,
r/o Dombalwadi (Kalaj),
Taluka Phaltan,
District Satara .. Appellant

Vs.

1. Bapurao Appaji Sul
age 45, Occupation-agriculture,
r/o Dombalwadi (Kalaj),
Taluka Phaltan,
District Satara.

2. Sonu Bhau Dombale
age 58, Occupation-agriculture,
r/o Dombalwadi (Kalaj),
Taluka Phaltan,
District Satara. .. Respondents

Mr. N.V. Walawalkar for the appellant.
None for the respondents.

**CORAM: B.H. MARLAPALLE, J.**

**Date : December 14, 2005.**

**ORAL JUDGMENT:**

1. All these three second appeals have been filed by Defendant No.2 in Regular Civil Suit No.228 of 1979, which was filed by Bapurao Appaji Sul who has

been arrayed as respondent no.1 in these appeals. The respondent no.1-plaintiff sought perpetual injunction against the present respondent no.2 and the appellant in respect of the suit property i.e. the agricultural land admeasuring 1 hectare and 8 ares located in Gat No.105 of village Dombalwadi in Phaltan Taluka of Satara District. It was contended that the plaintiff and defendant no.1 were friends and working at Mumbai. The suit land was owned by defendant no.1 (present respondent no.2) and on 19th October, 1978 he executed a Sale Deed in favour of the plaintiff for a consideration of Rs.10,000/- and the said Sale Deed was registered. The plaintiff was put in possession of the suit land and the defendant nos.1 and 2 executed a bogus and hallow unregistered Mortgage Deed dated 15/2/1975 and the plaintiff alleged that he was not aware of the said Mortgage Deed signed between the defendant nos.1 and 2. He claimed that such a Deed was bogus, illegal. The defendant no.2 could not claim possession over the suit property on the basis of such a deed. In the alternate, the plaintiff also prayed for possession of the suit property if the court found that on 19th October, 1978 it was defendant no.2 who was in actual possession of the

suit property. The said suit was decided by the learned Joint Civil Judge, Jr. Division at Phaltan on 8/10/1986. It was held by the trial court that the plaintiff failed to prove his possession over the suit property preferable to the lawful title as well as obstruction from the defendants. It was, therefore, held that the plaintiff was not entitled for permanent injunction as sought. The trial court also held that the plaintiff failed to prove that the defendants had ousted him from the suit land, but at the same time as per the trial court the plaintiff was entitled for possession of the suit land and, therefore, the suit was partly decreed while rejecting the plaintiff's prayer for injunction. The trial court held that the plaintiff was entitled to recover possession of the suit property from defendants 1 and 2 and the defendants were granted two months' time to hand over possession to the plaintiff.

2. The present appellant had filed Regular Civil Suit No.367 of 1981 in the Court of the learned Civil Judge, Jr. Division at Phaltan against the present respondents for injunction on the basis of the unregistered Mortgage Deed dated 12/5/1975. It was

contended by the present appellant that the respondent no.2 had mortgaged the suit property when he was in need of money and put the appellant in possession of the suit land on the basis of the mortgage by conditional sale with redemption period of five years and for a consideration of Rs.5000/-. He further claimed that the respondent no.1 had obstructed the cultivation of the land and had subsequently executed a Sale Deed registered on 19/10/1978. The said suit was decided by the trial court on 8/10/1986 holding that the plaintiff had failed to prove that he was in possession of the suit property preferable to valid title and though he had proved obstruction, he was not entitled to the discretionary order of injunction.

The suit was, therefore, dismissed on 8/10/19786.

2A. The present respondent no.1 had also filed Regular Civil Suit No.224 of 1983 in the Court of the learned Civil Judge, Jr. Division at Phaltan against the present respondent no.2 and appellant for a declaration that the Mortgage Deed of conditional repurchase dated 19/3/1983 executed between the defendants therein was bogus, hallow and not binding on him. He had also prayed for perpetual injunction

that the defendants therein should not obstruct his possession. The learned Civil Judge decided the suit on 8/10/1986 and held that the plaintiff therein proved that the Mortgage Deed dated 19/3/1983 was null, void and not binding on him, but the plaintiff could not prove lawful possession on the suit property on the date of the suit, though he proved his title to the suit land. The trial court, therefore, held that the plaintiff was entitled to get the declaration prayed for, though he was not entitled for the injunction. The suit was partly decreed by holding that the Mortgage Deed dated 19/3/1983 was illegal, void and not binding on the plaintiff (present respondent no.1).

3. The present appellant filed three different Civil Appeals against the decisions in three different suits, namely, RCS No.228/79, RCS No.367/81 and RCS No.224/83. These appeals came to be registered as Regular Civil Appeal Nos.619, 620 and 621 of 1986. The learned District Judge at Satara was pleased to dismiss all the three appeals by three different judgments dated 16/1/1991 and hence these three second appeals have been filed by the appellant. The

substantial questions of law, while admitting these appeals, are framed separately, but they revolve mainly around the validity/legality of the claim made by the present appellant on the basis of the unregistered Mortgage Deed dated 12/5/1975 as well as Mortgage Deed with condition of repurchase dated 19/3/1983, as against the title of the present respondent no.1 on the basis of the registered Sale Deed dated 19/10/1978 (Exh.54).

4. In RCS No.228/1979 the plaintiff (present respondent no.1) had stepped in the witness box and admitted that he was not in possession of the suit land on the date of the Sale Deed or after it was executed. When he went to the suit land after 19/10/1978 he noticed that the defendant no.2 i.e. present appellant was in actual possession of the suit land and he did not allow the plaintiff to enter in the land. He, therefore, went to Mumbai to seek explanation from the present respondent no.2 as to how the appellant was put in possession of the suit land. At the same time, the Sale Deed dated 19/10/1978 (Exh.54) was affirmed through the evidence of the scribe, namely, Shri Gopal Kale P.W.3 and in any case

the document was registered. The present respondent no.2 had alleged that he had not received the consideration from the plaintiff i.e. present respondent no.1. The trial court noted that the present respondent no.2 failed to prove that the Sale Deed was executed under force or duress and, therefore, his allegations were unreliable. On the other hand, the present respondent no.1 had proved that the first instalment of Rs.7000/- was paid to the present respondent no.2 at his house and the second instalment of Rs.3000/- was paid before the Sub-Registrar at the time of registration of the Sale Deed. While in the witness box present respondent no.2 had admitted that he received an amount of Rs.3000/-before the Sub-Registrar and in any case the Sale Deed at Exh.54 had noted that the due consideration of the sale transaction was received by the land owner.

5. The trial court noted that though the possession of the present appellant was admitted over the suit land, it was necessary to consider whether he was entitled to claim such possession under a valid title or document. The claim of the appellant was

based on the unregistered Mortgage Deed dated 12/5/1975 for a consideration of Rs.5000/- by way of loan given to the land owner and this deed was styled as "Gahan Swarupi Mudat Kharediche Karar Patra". On perusal of its terms, the trial court noted that the parties had intention to mortgage the land and the possession of the suit land was actually handed over to the present appellant and while mortgaging the land a condition was put that within the stipulated period of five years the land owner will repay the sum of Rs.5000/- and redeem his land and on his failure to do so the deed itself be treated as a Sale Deed. The trial court noted that though it was an agreement to execute a Mortgage Deed, the intention of the parties was that of mortgage and not of Sale Deed. The trial court noted that it was an unregistered document and in view of the provisions of Section 17 of the Indian Registration Act read with Section 49 of the said Act the said Deed could not be a valid document creating title over the suit land in favour of the present appellant, though it could be an evidence in collateral transaction. A Mortgage Deed which was unregistered is ineffective to claim title over the immoveable property and if a transaction of a mortgage

becomes void or is unenforceable because of non registration, the creditor is entitled to sue for his debt and, therefore, the appellant had such a remedy against the land owner, as per the trial court. The claim of the respondent no.1 was based on a registered Sale Deed (Exh.54) and the trial court, therefore, held that the appellant cannot avail of the protection under Section 53A of the Transfer of Property Act 1882 so as to claim adverse possession. This view taken by the trial court has been duly considered and confirmed by the Lower Appellate Court while dismissing all the three appeals filed by the present appellant and by separate judgments dated 16/1/1991. The substantial question of law framed in Appeal No.185/1991 reads as under:-

> "It was an error to hold that the document of mortgage executed by Defendant No.2 in favour of the Plaintiff being an unregistered document, it did not create any right, title or interest in the suit property."

6. The reasoning given by the trial court and confirmed by the Lower Appellate Court regarding the

title of the appellant over the suit land cannot be held to be illegal or perverse vis-a-vis the title of the present respondent no.1 on the basis of the registered Sale Deed dated 19/10/1978. The subsequent mortgage deed with conditional purchase dated 19/3/1983 has been held to be illegal, void and not binding upon the present respondent no.1 and rightly so. The concurrent findings recorded by both the Courts below rejecting the claim of the appellant based on the unregistered mortgage deed and the subsequent mortgage deed with the condition to purchase i.e. dated 19/3/1983 do not suffer from any infirmities in law.

7. Hence, these appeals fail and the same are hereby dismissed but without any order as to costs.

**(B.H. Marlapalle,J.)**